

Minutes of the Board of Adjustment meeting held on Monday, March 8, 2010, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Jonathan Russell, Vice-Chair
Rosi Haidenthaller
Wendell Coombs, Jr.
Mark Boren, Ordinance Enforcement Officer
Tim Tingey, Community & Economic Development Director
Citizens

Excused: Joyce McStotts, Chair
Connie Howard

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

APPROVAL OF MINUTES

Jonathan Russell asked for additions or corrections to the minutes of February 8, 2010. Wendell Coombs made a motion to approve the minutes as written. Rosi Haidenthaller seconded the motion.

Voice vote was taken. Minutes approved 3-0.

Mr. Russell explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property, is based on state outlined criteria, and that financial issues are not considered a hardship.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1399 – P & F RESTAURANT MANAGEMENT – 33 West 4500 South, Project #10-120

Kent Foote, 11288 Eagle View Drive, Sandy, was present to represent this request. Tim Tingey reviewed the location and request for a variance to corner lot side yard setback requirements and a variance to the R-N-B zoning district fencing regulations. He stated that this property was recently approved for a zone change to R-N-B, Residential Neighborhood Business, which is considered a buffer zone adjacent to residential property owners. Mr. Tingey stated that there will be an addition completed on the side of the home and that there is a small area that will not meet the setback standards. He explained that an additional variance is being requested to not install a masonry wall adjacent to the residential zone. He stated that several years ago a variance was granted to allow an 8 foot setback on the south property line due to the oddly shaped lot and three street frontages that reduced the buildable area of the lot. Mr. Tingey reviewed the standards for variances, and explained the unique circumstances related to the side yard setback request. He said that literal enforcement of the land use ordinance would cause unreasonable hardship due to the configuration of the site. He stated that having a setback variance will not substantially affect the general plan. He stated that staff is recommending approval of the side yard setback variance.

Mr. Tingey said that in relation to the variance requested for the masonry wall, staff has determined that there are not any unique circumstances related to this requirement and have recommended denial of the variance. He stated that it is critical to have a buffer

between this property and adjacent property owners. He said that the 6 foot masonry wall is required and would not be a hardship to complete.

Kent Foote stated that P & F Restaurant Management is the Arby's franchisee in the area. He said that this location is going to be used as an accounting office, which is a quiet use. He stated that initially there was a misunderstanding about setbacks due to the configuration of the property, but it seems that staff has addressed those concerns. Mr. Foote stated that he is concerned about the number of mature trees that would have to be removed in order to install a fence, and he thinks that the purpose of having a masonry fence is to provide a sound barrier. He said that the uses allowed in an R-N-B zone are quiet uses, and that if a fence is going to be required, he would prefer an attractive vinyl fence. Mr. Foote provided a letter from his residential neighbor that states he doesn't desire a masonry fence.

Mr. Coombs stated that the Board of Adjustment cannot change zoning requirements, and that the current ordinance requires a masonry fence. He said that he concurs with staff in finding that a hardship does not exist pertaining to installation of a masonry fence. He stated that a masonry fence has other functions besides acting as a sound barrier, such as for safety and security purposes. Mr. Russell stated that the variance goes with the property, so if Mr. Foote sells the property some day, it will be transferred to the next owner. He said that nobody knows what type of business may be at that site in the future. Ms. Haidenthaller stated that noise isn't always the biggest concern, and there are often complaints about headlights shining through residential windows. She said that the fence needs to also provide a visual buffer. Mr. Foote stated that he agrees with Ms. Haidenthaller, and would like to install a solid fence that is not masonry material.

Toby Harding, 965 Woodland Hills Drive, Woodland Hills, stated that he is present on behalf of Joyce Johnson, who resides at 4524 Boxelder Street. He provided a copy of a power of attorney from Ms. Johnson. He stated that he concurs with the staff recommendations pertaining to the fence. He said that he is in opposition to the other variance request and referred to a letter from Mr. Foote that stated he misunderstood the requirements and that the purpose of the variance is to accommodate the business. Mr. Harding stated that under Utah Code 10.9.A.702, Item 2ii, it states that in determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Section 2A, which is the issue before the Board, the appeal authority may not find an unreasonable hardship if the hardship is self imposed or economic. Mr. Harding stated that the failure of Mr. Foote to complete due diligence before purchasing this piece of property is a self imposed condition, and not a hardship that existed independent of the property or as a result of the property. He stated that Mr. Foote has cited economic hardship by indicating that he cannot conduct business if the variance is not granted, and that this is a prohibited reason for granting a variance. He said that a three-cornered lot is not an unusual circumstance. Mr. Harding stated that his wife was raised on Boxelder Street, and he also grew up on that street. He said that he is familiar with the area and the economic conditions in Utah. He referred to the original variance that was granted, and explained that it was granted because the original home sat with its frontage on Boxelder Street. He stated that the property was purchased by a new owner that wanted the frontage on a different street. Mr. Harding stated that the original variance was granted to a residence, and questioned if it would apply to the new zoning and a different use.

Ms. Haidenthaller asked where Ms. Johnson lived in relation to this property. Mr. Harding responded that she lives on the west side of Boxelder Street on the corner, and the driveway to this particular site would be in front of her home.

Pete Robbins stated that he owns an adjacent property. He stated that Ms. Johnson doesn't live at this address because she is in a care facility. He said that he thinks the family is trying to cover their interest in the property because they're trying to sell it. Mr. Russell asked Mr. Robbins to make his comments exclusively related to this issue. Mr. Robbins stated that he doesn't see any reason why this variance should not be granted. He said that the variance would not block the vision from the corner and would not detract from the neighborhood. He said that he would like to see a responsible and long term occupant at this site. He stated that the neighborhood is surrounded by commercial zones on all sides and he doesn't expect the area to remain residential for an extended period of time. Mr. Robbins stated that he thinks Mr. Harding is trying to tell the Board of Adjustment how they should do their job. Jonathan Russell stated that there are certain criteria that must legally be followed in order to grant a variance.

Mr. Foote stated that he was aware of the setback requirements when he closed on the property, and believes that his letter has been misinterpreted. He said that due diligence was completed. He said that if the variance is denied today he will simply put the property back up for sale. Mr. Foote stated that he has experience in land development, and that he has not dealt with a site like this in his history of closing on a number of properties. He said it is a difficult piece of property to work with.

Ms. Haidenthaller asked Mr. Tingey if he knew how many odd shaped lots there are in Murray that have street frontage on three sides. Mr. Tingey replied that it is unusual to see a property that is abutted on three sides by streets, which is why staff has deemed this to be a unique circumstance, and that combined with the reconfiguration of the road the buildable area of the site is dramatically reduced. Mr. Coombs asked if the City was evaluating changes to the fence requirements in this zone. Mr. Tingey responded that there has been brief discussion on types of appropriate fencing material, but at this time a 6 foot masonry wall is required. He said that although there are a number of land use classifications that are quiet uses, there are others allowed by Conditional Use Permit that have the potential of increasing traffic and noise.

Mr. Coombs made a motion to approve the request for the 10 foot setback variance for the building addition, and deny the fencing regulation variance. He stated that per the requirements, a masonry fence needs to be included at the site. Seconded by Ms. Haidenthaller.

Call vote recorded by Tim Tingey.

A Mr. Coombs

A Ms. Haidenthaller

A Mr. Russell

Motion passed 3-0.

Mr. Foote commented that the reason he was seeking the fence variance was in case the City wanted to preserve the trees.

Wendell Coombs made a motion to approve the Findings of Fact for Case #1399 as written for P & F Restaurant Management. Seconded by Rosi Haidenthaller.

A voice vote was taken. Motion passed 3-0.

CASE #1400 – WINCHESTER CONDOMINIUMS – 6563, 6567, 6569, 6571 and 6573
South Lovendahle Court, Project #10-121

Calvin Reynolds was the applicant present to represent this request. Mark Boren reviewed the location and request for a side yard variance for decks at Winchester Condominiums. He stated that the property is unusual in that it is very narrow, which makes it difficult to meet minimum setbacks. He said that the property is located directly west of the James Pointe Apartments. Mr. Boren stated that the first building contains 5 condominium units and the second building contains 6 units. He said that the variance request is for a side yard setback on each unit of the first building in order to accommodate some decks. He stated that the building had to be raised 2 feet higher than originally planned due to the shallow sewer connection in Winchester Street. He said that the variance request is for 2.5 feet in order to allow a 5 x 11 deck attached to the east side of the dwellings. Mr. Boren stated that the original plan showed a concrete patio for each condominium which is now not feasible since the building had to be raised. He said that granting this variance is essential to the enjoyment of a property right possessed by other properties in the district, and the variance, if granted, will not substantially affect the general plan and will not be contrary to public interest.

Ms. Haidenthaller asked about the elevation of the deck related to the height of the fence. Steve Scott stated that he is the general contractor on this project. He stated that from the top of the window well to the bottom of the sliding glass door is exactly 24 inches. He said that if there is one step with two risers directly from the door, the height of the deck will be less than 24 inches from the grade. He stated that the grade will remain the same, and there will be about 5.5 feet of fence height on the side of the condominiums. Mr. Scott stated that the deck dimensions will meet code. He said that each of the decks will meet a minimum side yard setback of 5.5 feet. Ms. Haidenthaller asked if there will be steps from the deck down to the ground. Mr. Scott responded that there will not, and that this is a difference between building and zoning codes. He said that it will be less than 2 feet to step down.

Ashley Youngberg stated that she manages the property to the west of the condominiums. She said that her company supports this request.

Wendell Coombs verified that this variance request only applies to the north building. Mr. Scott confirmed that it does. Mr. Coombs verified that there will be a minimum side yard setback of 5.5 feet. Rosi Haidenthaller stated that she is concerned with the deck being 2 feet off the ground and the potential for a fall, creating a liability issue. Mr. Scott stated that he would prefer to have a step down, but it would further encroach into the setback area. Mr. Russell suggested a railing around the deck.

Wendell Coombs made a motion to grant the side yard setback variance based on recommendations by staff. Seconded by Rosi Haidenthaller.

Call vote recorded by Tim Tingey.

A Mr. Coombs

A Ms. Haidenthaller

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A Mr. Russell

Motion passed 3-0.

Ms. Haidenthaller made a motion to approve the Findings of Fact for case #1400, Winchester Condominiums, as written. Seconded by Mr. Coombs.

A voice vote was taken. Motion passed, 3-0.

Meeting adjourned.

Tim Tingey
Director of Community & Economic Development